Supreme Court, U.S.
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No. (1)

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In The Supreme Court of the United States

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APOLINAR PERAFAN SALDARRIAGA, LUZ VELASQUEZ CARMONA, ADRIANNA MENESES VELASQUEZ, MAURICIO PERAFAN VELASQUEZ, ***Petitioners,***

v.

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHAT CONSTITUTES "POLITICAL OPINION" IN THE CONTEXT OF ASYLUM UNDER THE REFUGEE ACT OF 1980?

II. MAY PERSECUTION ON ACCOUNT OF AN IMPUTED POLITICAL OPINION BE THE BASIS FOR POLITICAL ASYLUM IN THE UNITED STATES?

III. MUST AN ASYLUM APPLICANT MEET A BURDEN OF PERSUASION OR A BURDEN OF PRODUCTION TO MEET HIS BURDEN OF PROOF?

PARTIES TO THIS PROCEEDING

The petitioners are Apolinar Perafan Saldarriaga ("Mr. Perafan"), his wife Luz Velasquez Carmona, his daughter Adrianna Memeses Velasquez, and his son Mauricio Perafan Velasquez, who are all citizens of Colombia.

The respondent is the Attorney General of the United States, representing the U.S. Department of Homeland Security.

CORPORATE DISCLOSURE STATEMENT

Apolinar Perafan Saldarriaga, Luz Velasquez Carmona, Adrianna Memeses Velasquez, and Mauricio Perafan Velasquez are not corporations. They have no parent corporation, nor does any publicly owned company own 10 percent or more of relevant stock.

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OPINIONS BELOW

The June 1, 2005 opinion of the Court of Appeals denying the petition for a rehearing en banc is set out at page A1 of the Appendix. The March 29, 2005 opinion of the Court of Appeals on the merits of the case, reported as *Perafan Saldarriaga v. Ashcroft*, 402 F.3d 461 (4th Cir. 2005), is set out at pages A2 through A13 of the Appendix. The January 13, 2004 opinion of the Board of Immigration Appeals reversing the Immigration Judge's decision granting Mr. Perafan asylum is at A14 through A20 of the Appendix. The July 30, 2001 decision of the Immigration Judge granting asylum is at A21 through A51 of the Appendix.

JURISDICTIONAL STATEMENT

The United States Court of Appeals entered its decision on March 29, 2005 (App. A2). The petitioner Mr. Perafan sought rehearing of the panel decision, and the Court of Appeals denied the motions for rehearing on June 1, 2005 (App. A1). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTE AT ISSUE

This case requires this Court to determine whether the petitioner Apolinar Perafan Saldarriaga is entitled to asylum because he would face persecution by narcotraffickers/insurgents who impute a political opinion to him if he returned to Colombia.

The Refugee Act of 1980 provides *inter alia* that "[a]ny alien who is physically present in the United States . . . irrespective of such alien's status, may apply

for asylum.[1] To receive asylum, an alien must demonstrate that he:

> is outside any country of such person's nationality . . is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[2]

STATEMENT OF THE CASE

Apolinar Perafan applied to the Immigration and Naturalization Service (INS) for asylum. The Immigration Judge at Arlington, Virginia, after conducting a trial lasting several days, found that Mr. Perafan was entitled to asylum, and the following facts were established:

> (1) Mr. Perafan was employed by an undercover United States Drug Enforcement Administration (DEA) agent, Javier Cruz, who operated a DEA-sponsored money-laundering operation in Colombia (App. A24);
>
> (2) The United States is involved in a war against narcotraffickers and anti-

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[1] 8 U.S.C. § 1158(a) (2001).

[2] 8 U.S.C. § 1101(a)(42)(2001 & Supp. II 2004).